

BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION

BNSF RAILWAY COMPANY

Petitioner,

v.

SNOHOMISH COUNTY

Respondent.

DOCKET NO. TR-090121

COMMENTS OF LYNN F. LOGEN
ON COMPLETION OF
ENVIRONMENTAL REVIEW
PROCESS UNDER STATE
ENVIRONMENTAL POLICY ACT
(SEPA)

September 11, 2009

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I. INTRODUCTION

1. Following consultation with my brother, Dan Logen, I offer the following comments regarding the SEPA Environmental Checklist submitted by BNSF Railway Company (BNSF) that has been included as Exhibit 30 in this docket. These comments are very similar to the comments I submitted to the State Department of Transportation on July 31, 2009.

II. DISCUSSION

2. The SEPA Environmental Checklist was reviewed by the Washington State Department of Transportation ("WSDOT"). WSDOT has a vested interest in seeing that this project move forward as planned as evidenced by the Notice of Action issued by WSDOT on August 26, 2009. In that Notice of Action it was stated that WSDOT approved funding for the project. I believe that a conflict of interest exists

when an agency that is funding a project also reviews the environmental impacts of that project.

3. My comments on BNSF's SEPA Environmental Checklist are offered below and are identified by paragraph and page number rather than quoting the entire response to each item on the checklist.

III. COMMENTS

4. Paragraph A, 11: - (page 3) At the end of the first paragraph of the response is the following: "and 3) reconstruction of existing stormwater conveyance ditches between the tracks and agriculture fields and adjacent highways." Comment: This should include the ditches on both sides of the tracks as there will likely be an impact on the ditches on the East side as well as the West side. I believe the present plans only include reconstruction on the West side.
5. Paragraph B. 1. d. - (page 4) There have been landslides across Dettling road in the past which is the first crossing North of the Logen Road crossing (which is proposed to be closed). This is adjacent to the existing tracks and indicates a history of unstable soils.
6. Paragraph B. 2. a. - (page 5) This response states that "...emissions from the site will be limited to diesel train exhaust passing the site, which is preexisting to the project." The only reason the Logen Road crossing is proposed to be closed is that there will be, according to BNSF, trains parked on the siding for extended periods which requires the closure of Logen Road. I believe that trains left on a siding are normally left idling, or if they are shut off, there would be increased diesel exhaust when re-starting. In either case there is an impact on emissions into the air. Either

the BNSF petition to the Washington Utilities and Transportation Commission is wrong or this SEPA document is wrong.

7. Paragraph B. 3. a. - (page 6) This response states that there are "no intertidal effects or estuarine habitat conditions within the project limits." I am not an expert, but the definition of estuarine is where a tide meets a river. There are several streams that, prior to the installation of dikes and sluice gates were estuaries. When the sluice gates fail or are broken the tides do come up the ditches into this area. While this is infrequent, it is possible. Also the beavers in "estuarine tidal marsh" researched by Dr. W. Gregory Hood have extended their range into this area as evidenced by dams in ditches in the area. (See www.skagitwatershed.org and Seattle times on Monday, May 18, 2009.) This entire area was an estuarine tidal marsh area prior to installation of dikes, as evidenced by the clam shell mounds in the area.
8. Paragraph B. 5. a. - (page 10) This response lists the birds and animals that have been observed or are known to be on or near the site. BNSF has failed to include Trumpeter Swans in their list of "other" birds and failed to circle "beaver" and to include in the list of "other" mammals skunks and nutria. Also, under fish, "trout" was not circled. Also, I find it interesting that frogs and other amphibians are not listed anywhere in this document. This area is part of the Pacific Flyway of migrating birds.
9. Paragraph B.5.c. - (page 10) This response says that the site is not part of a migration route. This site is often the resting and feeding spot for migrating snow and Canada geese and numerous types of ducks. I am not aware of migrating

Trumpeter Swans feeding or resting at the site, but they pass over the site on their migration. This area is also identified on maps as part of the Pacific Flyway.

10. Paragraph B. 7. a. - (page 11) This response says there will be no environmental health hazards anticipated as a result of this project. If the railroad ties are creosote treated there will be additional creosote leached into the surrounding water and earth causing health hazards. Creosote has been identified as an acute risk to freshwater and saltwater fish and aquatic invertebrates by the United States Environmental Protection Agency in a memorandum dated August 29, 2008 (available on internet).
11. Paragraph B. 8. 1. - (page 13) This response says that the project is a continuation of an existing historic use. However, part of the project involves closing the Logen Road crossing of the BNSF railroad. This use was in existence prior to the construction of the railroad (see transcript of public hearing in WUTC Docket No. TR-090121). Also the project eliminates access to agricultural lands from adjacent lands owned by the same family.
12. Paragraph B.13.b. - (page 16) This response says "Not applicable" to describing landmarks or evidence of historic, archaeological, or cultural importance know to be on or next to the site. There is a cemetery East of the tracks and just North of the Logen Road crossing. Also, adjacent or on the railroad right of way East of the tracks and North of Logen road there exists shell mounds left by Native Americans. These shell mounds contain stone implements discarded by Native Americans. A portion of the mounds were most likely covered/removed by the construction of the existing tracks.

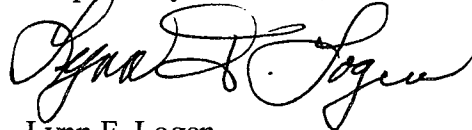
13. Paragraph B.14.a. - (page 16) There are wetlands on both sides of the area in which the cul-de-sac will be constructed as well as the shell mounds mentioned above. The street access for agricultural vehicles was not considered in the plan.
14. Paragraph B. 14.g. - (page 17) The response to this item says that trains will be cleared faster from crossings. It does not mention that a crossing is being eliminated (Logen Road) and there is no action being taken to mitigate the impacts of that closure. Also the siding will have parked trains across the grade crossing called Dettling Road for extended periods of time as well as the private crossing South of the Logen Road crossing. So there are transportation impacts that have not been considered or addressed. BNSF's response that there will be faster clearing of trains across public crossings will result is not correct for the Stanwood area, it may result in faster clearing of crossings in other area between Seattle and Canada, but the project adversely impacts the vehicular transportation in the area of the project and no mitigation is proposed.
15. Paragraph B. 15. - (page 17) There is a definite impact on fire and aid response to the area affected by the closure of the Logen Road crossing. See the correspondence from the Fire Chief to the Washington Utilities and Transportation Commission in Docket No. TR-090121. The project includes closure of the Logen Road grade crossing which will result in the need for increased public services so that response times to the area can be maintained. As BNSF has stated in the SEPA, they are doing nothing to mitigate the impacts on the public services to the residents in the area.

IV. CONCLUSION

16. I believe that in order for a proper nonbiased environmental review to be completed it should be reviewed by the Washington State Department of Ecology rather than the WSDOT. I also believe that the SEPA Environmental Checklist contains a number of flaws as described in my comments and should be rejected as incomplete and inaccurate.
17. BNSF states in its response to section 2.a. of the SEPA that "Following completion of the project, emissions from the site will be limited to diesel train exhaust passing the site, which is pre-existing to the project." This is an update to previous statements made by BNSF that the reason for the proposed closing of the Logen Road crossing were primarily because the crossing would be blocked for extended times by trains on the siding (trains that are not "passing the site"). Therefore, that reason for closing the crossing no longer exists and the Logen Road crossing should remain open as there will be no question of blockage of a public grade crossing as provided for in WAC 480-62-220.

September 11, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynn F. Logen". The signature is written in a cursive style with a large initial "L".

Lynn F. Logen